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UARCO Inc. - Decision of the NLRB

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UARCO Inc. - Decision of the NLRB

Abstract

Discusses employee coercion by management prior to the NLRB election. Labor Relations Reference Manual (Volume 88): 1103-1105.

Similarly, while we agree with the Administrative Law Judge's construction of the facts here in issue as showing that the purpose of the picketing by Respondent was to secure a reassignment of the work by Roslyn to a contractor who could be counted on to employ persons represented by Respondent, we cannot conclude, as did the Administrative Law Judge, that such picketing and inducement by Respondent "was lawful because the objective was proper." The most that can be said of such picketing, and the most that should have been said in this proceeding, was that it did not violate Section 8(b)(4)(B) of the Act because of the lack of neutrality of Roslyn. Indeed, just as Local 25's initial picketing was in support of its jurisdictional claim to the work, so also, in our view, was Respondent's picketing to have the work reassigned to persons represented by it.

Since we would base the decision here on the very narrow ground above indicated, we would also disavow much of the language used by the Administrative Law Judge characterizing Respondent's conduct as "reasonable, peaceful, confined only to the direct necessities of the situation," and other such gratuitous characterizations which appear to ignore whether the conduct may have been in violation of Section 8(b)(4)(D).

UARCO INC.—

Decision of NLRB

UARCO INCORPORATED, Riverside, Calif. and PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, DISTRICT COUNCIL NO. 2, INTERNATIONAL PRINTING AND GRAPHICS COMMUNICATIONS UNION, AFL-CIO, Case Nos. 21-CA-12318 and 21-RC-13442, December 31, 1974, 216 NLRB No. 2

Jon M. Brandler, Los Angeles, Calif., for General Counsel; William F. Treacy, Wilmette, Ill. and James B. Brown, Barrington, Ill., for employer; Matthew B. F. Blren, Los Angeles, Calif., for union; Administrative Law Judge Russell L. Stevens.

Before Jenkins, Kennedy, and Penello, Members.

INTERFERENCE Sec. 8(a)(1) ELECTION Sec. 9(c)

—Solicitation of grievances ▶ 50.48 ▶ 62.5599

Employer did not violate LMRA or interfere with representation election when, during pre-election meetings with employees, it impliedly solicited complaints and grievances, even though solicitation of grievances at pre-election meetings carries with

it a rebuttable inference that employer is impliedly promising to correct inequities it discovers as result of its inquiries, since this inference has been rebutted, it appearing that (1) employer, in response to employees' primary grievance concerning lack of communication and effectiveness of shop committee, (a) did not make any promise to increase effectiveness of shop committee or attend all meetings of that committee in future, and (b) repeatedly told employees that it could not make any promises concerning grievances raised; (2) evidence fails to disclose union animus by employer; (3) employer's pre-election conduct did not occur in context of other unfair labor practices. Different result is not warranted by fact that immediately prior to election, employer distributed letter to employees asking employees to believe that its division manager had learned nature of their problems, that he was concerned about them, that the problems could be worked out together, and that he would do his best, since this is "at best ambiguous" and does nothing to support or reinforce employee anticipation of improved conditions of employment which would make union representation unnecessary.

—Granting of benefit ▶ 50.48 ▶ 62.5598

Employer did not violate LMRA or interfere with representation election when, in response to specific request made by an employee during pre-election meeting with employer, employer posted telephone numbers of two of its executives on employee bulletin boards. (1) Only "benefit" thereby bestowed upon employees was ability to dial these executives directly rather than having to place call through switchboard; (2) this represented no more than minor gesture by management; (3) even if it had been new means of reaching management, it was too trivial an act to constitute proscribed granting of benefits which would interfere with employee rights in an organizing campaign.

[Text] Respondent held 10 preelection meetings commencing one month before and ending 24 to 48 hours prior to the December 13, 1973, Board-conducted election. The meetings, attended by representatives of Respondent and employees, were held in three series in the plant's conference room and cafeteria in order to accommodate employees on all three shifts. Although attendance was voluntary, almost all of the employees were present. Representing Respondent at each

of the meetings were William E. Gordon, Riverside plant manager; Thomas E. Mc-Lemore, western division manager; James B. Brown, vice president and secretary; and William F. Treacy, counsel; prior to that time, employees had never met any of Respondent's representatives except Gordon.

At the first series of meetings, Gordon introduced Respondent's other representatives and then turned the meetings over to Treacy who explained the mechanics of a National Labor Relations Board election, after which Respondent "threw the meetings open to questions and discussions." Although many of the witnesses offered conflicting testimony, it appears that Respondent carefully avoided an express "solicitation of complaints and grievances." Nevertheless, when Respondent threw open the discussion, all persons present interpreted that gesture as an offer by Respondent to entertain complaints or gripes. This interpretation seems plausible since employees, with the acquiescence of Respondent, proceeded to raise complaints, the major one being the lack of communication between management and employees and especially the ineffectiveness of the shop committee which had been created in 1970 as a device for such communication. Respondent's representatives listened and responded to the comments about the shop committee, and the discussion of this topic was continued at subsequent meetings. The Administrative Law Judge found, and we agree, in view of the prolonged discussion of the complaints with Respondent's tacit, if not actual, encouragement; the number of meetings; the absence of a regular practice of holding such meetings; and the admitted desire of Respondent to win the support of the employees at the meetings, that Respondent at least impliedly solicited complaints and grievances from the employees. Nevertheless, the Administrative Law Judge also found, and we agree, that the Respondent's preelection conduct was not coercive and that it neither violated Section 8(a)(1) of the Act nor interfered with the freedom of choice of the employees in the election.

The disposition of this case rests on the resolution of the question whether Respondent, by its conduct, impliedly made promises of benefits to the employees, for there is no doubt that none of Respondent's statements themselves contained any such express promises. As noted by the Administrative Law Judge and by our dissenting colleague, the solicitation of grievances at preelection meetings carries with it an inference that an employer is implicitly promising to correct those inequities it discovers as a result of its inquiries.² Thus, the Board has found unlawful interference with employee rights by an employer's solicitation of grievances during an organizational campaign although the employer merely

stated it would look into or review the problem but did not commit itself to specific corrective action; the Board reasoned that employees would tend to anticipate improved conditions of employment which might make union representation unnecessary.³ However, it is not the solicitation of grievances itself that is coercive and violative of Section 8(a)(1),⁴ but the promise to correct grievances or a concurrent interrogation or polling about union sympathies that is unlawful; the solicitation of grievances merely raises an inference that the employer is making such a promise, which inference is rebuttable by the employer.

In the instant case, notwithstanding the background against which the preelection employee-management meetings were set,⁵ the inference of such a promise has been effectively rebutted. As set forth above, the principal complaint raised at the meetings concerned the lack of communication and the ineffectiveness of the existing shop committee for this purpose. Representatives of Respondent merely replied that the efficacy of a shop committee depends on the efforts of the employees and then cited some examples of successful shop committees in other plants. Not only did Respondent's representatives make no promise to put more "teeth" into the shop committee or to attend all meetings of that committee in the future,⁶ but throughout the meetings the employees were repeatedly told that the Employer could make no promises regarding the grievances raised. Thus, any possible inference of a promise of benefits was specifically negated by the express "no promise" responses to the employees' complaints, in the circumstances of this case. And, unlike the situation in *Reliance Electric Company*,⁷ any logical anticipation of improved conditions which the employees otherwise might have had was clearly dispelled by the express, affirmative emphasis on the Employer's inability to make promises.⁸ Particularly is this

³ *Reliance Electric Company*, supra; *Rotek, Incorporated*, 194 NLRB 453, 78 LRRM 1685 (1971).

⁴ Apparently our dissenting colleague would find the solicitation of grievances alone is coercive and unlawful, despite any evidence that may show that there was no promise of benefits. We cannot accept such a view. While it is possible that in some situations the surrounding circumstances would warrant finding an illegal promise notwithstanding statements to the contrary such as were made here, this is not such a case.

⁵ These circumstances are that Respondent was not in the habit of holding such meetings; but for the organizational campaign by the Union, they would not have been held; and, finally, Respondent's representatives impliedly (but not directly) solicited complaints and grievances from the employees.

⁶ The Administrative Law Judge so found based on credibility resolutions.

⁷ Supra.

⁸ *Peerless of America, Incorporated*, 198 NLRB No. 138, fn. 6, and ALJD III.C.6, 81 LRRM 1472 (1972). In that case the Board, with Member Jenkins participating, found no unfair labor practice where an employer, during an organizational campaign, asked several employees about their problems or

² *Reliance Electric Company*, Madison Plant Mechanical Drives Division, 191 NLRB 44, 77 LRRM 1327 (1971); *Hadbar*, Division of Pur O Sil, Inc., 211 NLRB No. 32, 86 LRRM 1437 (1974).

so where, as here, the record is devoid of any showing of union animus on the part of Respondent, and there is not one scintilla of evidence that Respondent's preelection activities were conducted in the context of other unfair labor practices.⁹

Nor is a different result warranted because of the Respondent's letter, signed by McLemore, which was distributed to the employees just prior to the election and shortly after the last series of meetings, which stated:

- "I am asking you to believe:
 "1. That I have learned what your legitimate problems are.
 "2. That I am concerned about your problems.
 "3. That we can work out these problems by working together.
 "I will make one promise that I will do my best."

This is, at best, ambiguous and does not alter the fact that Respondent did not make promises of corrective action and, in fact, cautioned that it could not do so. McLemore's letter, in asserting an awareness and concern for the problems of the employees, clearly related to the preceding meetings in which management officials emphasized that no promises could be made. McLemore's statement, "I will make one promise that I will do my best," when considered, as it must be, in the context of the position taken at the meetings, does nothing that would support or reinforce employee anticipation of improved conditions of employment which might make union representation unnecessary.

Finally, our dissenting colleague would find a grant of benefit because, in response to a specific request by an employee made during one of the preelection meetings, the telephone numbers of two of Respondent's executives were posted on employee bulletin boards. But the only "benefit" thereby bestowed upon the employees was the ability to dial these executives directly rather than having to place the calls through the switchboard; this was merely a matter of convenience and did not open an avenue of communication with management which theretofore had been closed. Accordingly, we agree with the Administrative Law Judge that the posting of the numbers represented no more than a minor gesture by management, and even if it had been a new means of reaching management it was too trivial an act to constitute a proscribed granting of benefits

complaints but told each of them that the company could make no promises, and the other statements by the employer implied no promise of benefits.

9 Contrary to the interpretation of our dissenting colleague, we are not placing any limitations upon or modifying the existing rule that solicitation of grievances implies a promise to correct complaints. Rather, it is he who has misconstrued that rule. For, we have never found more than a presumption or inference of a promise of benefits and it is not and never has been an irrebuttable presumption which must be accepted blindly regardless of evidence which leads to a different conclusion.

which would interfere with employee rights in an organization campaign.

For the above reasons, we find no basis for reversing the Administrative Law Judge's conclusion that Respondent neither violated Section 8(a)(1) of the Act nor interfered with the laboratory conditions necessary for a fair election.

Complaint is dismissed. Certified that union lost election.

JENKINS, Member, dissenting:

[Text] My colleagues find that Respondent's solicitation of employee grievances and complaints and its response to the matters raised, all of which occurred during the preelection period, is insufficient to demonstrate that the employees were coerced thereby or that such conduct interfered with the Board election. I disagree and, since issues of this nature must be resolved not merely on the remarks themselves, but also in the context in which they were made, I will set forth briefly what I understand to be the pertinent facts.

The evidence shows that, during the critical period prior to the Board election, Respondent held a series of 10 meetings with its employees, the last of which occurred a day or two prior to the election. Attendance at these meetings was voluntary, although, in fact, most employees were present. It is uncontroverted that similar group employee-management meetings had not been held in the recent past¹¹ and that, with the exception of Plant Manager Gordon, the high-level management representatives attending the meetings were strangers to the employees. Further, it is admitted by Respondent that one of the purposes of these meetings was to attempt to persuade employees that a union was not necessary.

At the first series of meetings, Respondent's counsel, Treacy, explained the mechanics of a Board election and, thereafter, Respondent threw the meetings open to discussion. Although Respondent was careful not to directly solicit grievances and complaints, the Administrative Law Judge found, and my colleagues and I agree, that the record evidence

10 Our dissenting colleague suggests that the meetings at which the grievances were aired not only raised an inference of promises to take corrective action, but were in fact themselves a remedy to the complaint of the failure of management to communicate with the employees. We do not agree. Respondent's decision to hold the meetings was a natural response to an election campaign before it became aware that lack of communications was an employee grievance. It is difficult indeed to conceive of any course Respondent might have followed, short of altogether abandoning its right to hold voluntary meetings to communicate its view to its employees, which would have been less likely to interfere with the employees' freedom of choice in the upcoming election.

11 The last such meeting was several years earlier and in similar circumstances in that it was also conducted just prior to a National Labor Relations Board election.